

# SENATE BILL REPORT

## E2SHB 1096

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As of February 26, 2010

**Title:** An act relating to enhancing small business participation in state purchasing.

**Brief Description:** Enhancing small business participation in state purchasing.

**Sponsors:** House Committee on General Government Appropriations (originally sponsored by Representatives Hasegawa, Green, Kenney, Chase, Hudgins and Moeller).

**Brief History:** Passed House: 2/13/10, 84-10.

**Committee Activity:** Economic Development, Trade & Innovation: 2/22/10, 2/24/10, 2/25/10 [DPA-WM].

Ways & Means:

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### SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kastama, Chair; Shin, Vice Chair; Zarelli, Ranking Minority Member; Delvin, Eide and Kilmer.

**Staff:** Jack Brummel (786-7428)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jenny Greenlee (786-7711)

**Background:** The Department of General Administration (GA) establishes overall state policy for state purchasing, and contracts with individuals and companies outside of state government to provide goods and services to the state. Under delegated authority, other state agencies and the institutions of higher education also contract for goods and services. The state's purchasing authority is generally organized into categories based on the type of service. Among these categories are:

- Purchased Goods and Services. These goods and services are ones provided by a vendor to accomplish routine, continuing and necessary functions.
- Personal Services. This term refers to professional or technical expertise provided by a consultant to accomplish a specific study or project.
- Information Services. These services include data processing, telecommunications, office automation, and computerized information systems.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Printing Services. This term refers to the production of the state's printed materials.

Except in specific circumstances, Washington law does not provide preferences to bidders who are in-state. The statutory exceptions include:

- Ferries. In Washington, the Department of Transportation's bid documents for jumbo ferries must include a requirement that the vessels be constructed within Washington, with exceptions for certain equipment and systems.
- Washington-grown Food for Schools. School districts are authorized to implement policies to maximize the purchases of Washington-grown food. Such policies may include permitting a percentage price preference for Washington-grown food.
- In-state Printing. Printing for state agencies must be done within Washington, unless the work cannot be executed in state or the lowest in-state bid exceeds the customary charges in the private sector.

In addition to these in-state preferences, GA is required to identify other states that provide in-state preferences to their own bidders. If a bidder from one of those states submits a bid for a state contract in Washington, GA may add a percentage increase to that bidder's proposal. This increase is used only to evaluate the bid and is not paid to any supplier whose bid is accepted.

State procurement laws that give preference to domestic goods or prohibit purchasing foreign goods have been challenged on one or more grounds. These include arguments that such laws are (1) invalid exercises of state power under the federal Commerce Clause; (2) preempted by federal statute or in violation of international agreements on government procurement; or (3) in violation of Equal Protection/Privileges and Immunities clauses.

**Summary of Bill (Recommended Amendments):** GA, the Department of Transportation, and the Department of Information Services are to develop and implement a plan to increase the number of small businesses receiving state contracts. Using 2009 as the base year, contracts to small businesses are to be increased by 50 percent in 2012 and 100 percent in 2014.

Small business is defined as an in-state business that is either: (1) certified by the Office of Minority and Women's Business Enterprises; or (2) has fewer than 51 employees or less than \$7 million in annual gross revenues.

**EFFECT OF CHANGES MADE BY ECONOMIC DEVELOPMENT, TRADE & INNOVATION COMMITTEE (Recommended Amendments):** The amendment replaces the small business preference program with a requirement to develop and implement a plan to increase the number of small businesses receiving state contracts. Using 2009 as the base year, contracts to small businesses are to be increased by 50 percent in 2012 and 100 percent in 2014.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Economic Development, Trade & Innovation):** PRO: Community groups support this. Anything we can do to help small businesses is of value. The bidding preference could cost the state but there is a multiplier effect by keeping revenue local. We have retaliatory measures but we don't avail ourselves of them.

OTHER: There is concern about the cost to state government. The concept is laudable but counter to statutory mandate to maximize economies of scale. State costs could be 5 percent higher. State law allows agencies to chose to contract outside bidding process if lower costs are attainable and this would conflict. There is a lack of certification authority to verify eligibility. The protest process in the bill conflicts with other protest processes. We do practice reciprocity by marking up the bids of small businesses that are certified and getting preferences in other states. This will increase DOT costs about \$195,000 to check eligibility and assist small businesses. The Federal Circuit Court of Appeals recently struck down a Federal Department of Defense preference for small business.

**Persons Testifying (Economic Development, Trade & Innovation):** PRO: Representative Hasegawa, prime sponsor.

OTHER: Servondo Potlon, GA; David Davis, DOT; Blake Chard, DIS.